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HOUSE OF REPRESENTATIVES

**BROADCASTING LEGISLATION AMENDMENT (DIGITAL RADIO) BILL
2015**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Communications,
Senator the Honourable Mitch Fifield)

BROADCASTING LEGISLATION AMENDMENT (DIGITAL RADIO) BILL 2015

OUTLINE

The Broadcasting Legislation Amendment (Digital Radio) Bill 2015 (the Bill) amends the *Broadcasting Services Act 1992* (BSA) and the *Radiocommunications Act 1992* (Radcomms Act). It contains a package of measures designed to reduce regulatory complexity and to facilitate the rollout of digital radio in regional Australia.

In July 2015, the Australian Government released a report (the Digital Radio Report) on the statutory reviews of digital radio issues which were conducted by the former Department of Communications in accordance with section 215B of the BSA and section 313B of the Radcomms Act. The Bill's measures are largely drawn from the recommendations of the Digital Radio Report and propose to amend the BSA and the Radcomms Act to deliver a simpler, more flexible process for the planning and licensing of digital radio in regional Australia. The Bill also contains measures to repeal spent provisions and to amend a definition in the Radcomms Act to ensure it achieves the relevant policy objective.

Measures in the Bill include:

- repealing the restricted datacasting licence category;
- removing the Minister's role in the setting of the digital radio start-up day in regional licence areas;
- removing the requirement for a six year moratorium on the allocation of additional digital commercial radio broadcasting licences in a licence area following the commencement of digital radio services in that area and removing provisions related to the moratorium period;
- amending the definition of 'non-foundation digital radio multiplex transmitter licence' to ensure that the definition operates in a manner consistent with the relevant policy objective;
- making minor amendments to the BSA and the Radcomms Act to repeal spent digital radio provisions; and
- making amendments to the BSA and Radcomms Act which are necessary as a consequence of the above-listed measures.

Repeal of the restricted datacasting licence category

The Bill would repeal the restricted datacasting licence category.

The datacasting regulatory regime was introduced to promote the development of new and innovative services which were distinct from traditional broadcasting services. In 2007, a sub-category of datacasting licence, the restricted datacasting licence, was introduced to allow service providers to use the digital radio platform to provide information-only or educational programs. However, in the years since the restricted datacasting licence category was introduced, no restricted datacasting licences have been issued by the Australian Communications and Media Authority (ACMA). The Digital Radio Report recommended that the restricted datacasting licence category should be repealed.

Repealing the restricted datacasting licence category would simplify the digital radio regulatory framework while not preventing service providers from continuing to offer new and innovative digital radio services to listeners.

Changes to digital radio start-up day requirements

A licence area's 'digital radio start-up day' is the day on which relevant licensees are authorised to commence providing digital radio services in that licence area. Paragraph 8AC(3)(b) of the BSA requires the ACMA to ensure that the digital radio start-up day for a regional licence area is the day specified in a legislative instrument made by the Minister.

The Bill would repeal paragraph 8AC(3)(b) of the BSA to remove the Minister's 'gatekeeper' role in the setting of regional licence area digital radio start-up days so that the ACMA has direct responsibility for determining when digital terrestrial radio services can commence in regional licence areas.

This measure would simplify the provisions regarding the planning and licensing of digital radio services in regional licence areas, and remove unnecessary Government intervention in the commencement of digital radio services in those areas.

Removal of requirement for digital radio moratorium period

Section 35C of the BSA provides that the ACMA must not allocate new digital commercial radio broadcasting (broadcasting services bands) licences in a licence area during the six year period beginning on the digital radio start-up day for that licence area. This six year period, which the BSA refers to as the 'digital radio moratorium period', was intended to provide incumbent commercial radio broadcasters with a level of stability and certainty during the digital radio investment phase. In addition, restrictions on the parties that may hold shares in digital radio multiplex transmitter (DRMT) licensees apply during the digital radio moratorium period.

The Bill would remove the requirement for the digital radio moratorium period from the BSA as well as provisions relating to the digital radio moratorium period in the BSA and Radcomms Act.

Digital radio services commenced in all five metropolitan licence areas in 2009 and the moratorium period expired on 30 June 2015. In the six years since digital radio services commenced in metropolitan licence areas, the protection from competition offered by a digital radio moratorium period has not provided sufficient incentive for commercial radio broadcasters to extend digital radio services into regional licence areas.

Given this, there is no strong public policy rationale for artificially restricting the allocation of new digital commercial radio broadcasting licences in regional licence areas, or the ownership of shares in a DRMT licensee.

Definition of 'non-foundation digital radio multiplex transmitter licence'

Category 3 DRMT licences authorise the transmission of digital national radio broadcasting services and/or national restricted datacasting services and, essentially, may only be held by either or both of the national broadcasters.

Category 3 DRMT licences currently fall within the definition of 'non-foundation digital radio multiplex transmitter licence' that is in section 5 of the Radcomms Act. This means that

the Radcomms Act provisions that are expressed to apply in respect of all non-foundation DRMT licences apply to category 3 DRMT licences (notably sections 102F and 129).

Section 102F of the Radcomms Act provides that before issuing a non-foundation DRMT licence for a particular licence area, the ACMA must ensure (among other things) that one or more foundation DRMT licences are in force for the licence area. There is no clear policy reason for the issue of category 3 DRMT licences to be limited in this way.

Section 129 of the Radcomms Act excludes ‘non-foundation’ DRMT licensees (including category 3 DRMT licensees) from applying for renewal of their licence. There is, also, no clear policy reason to prevent category 3 DRMT licences from being renewed in the same manner as ‘foundation’ DRMT licences.

The Bill would address these issues by amending the definition of ‘non-foundation digital radio multiplex transmitter licence’ in section 5 of the Radcomms Act so that it excludes category 3 DRMT licences. This would mean that existing category 3 DRMT licences can be renewed and new category 3 DRMT licences may be issued prior to the issue of one or more foundation (category 1 or 2) DRMT licences.

FINANCIAL IMPACT STATEMENT

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

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Broadcasting Legislation Amendment (Digital Radio) Bill 2015

The Broadcasting Legislation Amendment (Digital Radio) Bill 2015 (the Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Human Rights Act).

Overview of Bill

The purpose of the Bill is to enact a package of measures, arising from the recommendations of the Digital Radio Report, which amend the *Broadcasting Services Act 1992* (BSA) and the *Radiocommunications Act 1992* (Radcomms Act) to deliver a simpler, more flexible process for the planning and licensing of digital radio in regional Australia. It contains a package of measures designed to reduce the regulatory burden on the broadcasting industry and to facilitate the rollout of digital radio in regional Australia.

Human rights implications

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

The Bill does not engage any of the applicable rights or freedoms. In coming to this conclusion, specific consideration was given to a number of human rights relevant to the measures in the Bill, including:

- Right to enjoy and benefit from science and culture (Article 15 ICESCR);
- Right of accessibility for people with a disability (Article 9 CRPD);
- Right to equality and non-discrimination (Article 5 CRPD, Article 26 ICCPR);
- Right to freedom of opinion and expression (Article 19 ICCPR, Article 21 CRPD).

Relevant Rights under the CRPD

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

Article 9 of the CRPD provides that countries shall take appropriate measures to ensure that persons with disabilities have access to information and communications, including information and communications technologies as well as systems. The appropriate measures should include the identification and elimination of obstacles and barriers to accessibility.

Article 5 of the CRPD also provides for the right to equality and non-discrimination, and requires that State Parties recognise that all persons are equal before and under the law (also refer to Article 26 of the ICCPR).

In addition, Article 21 of the CRPD sets out a number of obligations on Parties to ensure that people with a disability can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas, on an equal basis with others.

Relevant Rights under the ICESCR

Article 15 of the ICESCR provides that countries shall recognise the right of all people to enjoy and benefit from science and culture. This recognition extends to ensuring the rights of everyone:

- To take part in cultural life;
- To enjoy the benefits of scientific progress and its applications;
- To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which a person is the author.

Article 19 of the ICCPR also sets out a general right of freedom to opinion and expression. In particular, Article 19 provides that State Parties must take all appropriate measures to ensure that everyone shall have the right to hold opinions without interference and have the right to freedom of expression.

Effect of Amendments on Human Rights

The Bill will simplify the digital radio regulatory framework by repealing the restricted datacasting licence category under the BSA. Since its inception in 2007, no restricted datacasting licences have been issued by the Australian Communications and Media Authority (ACMA). The repeal of the licence category will not change the policy intent of either the BSA or Radcomms Act, nor will repealing the category infringe on any of the relevant human rights listed above. As the restricted datacasting licence category has not to date been utilised, it has never given rise to any associated datacasting services.

Repealing the restricted datacasting licence category will not interfere with any person's right to enjoy and benefit from science and culture per ICESCR Article 15, nor will repealing the category interfere with a person's right to equality and non-discrimination or the right to freedom of opinion and expression. Furthermore, repeal of the category will not affect any of the relevant human rights affecting people with disabilities, as to date, the licence category has not given rise to any services.

The Bill will also remove the Minister's role in setting digital radio start up days in regional areas. The removal of this gatekeeper role would allow the ACMA to determine when digital radio providers can commence services in regional licence areas. It would also allow the ACMA to more easily plan the rollout of digital radio to regional Australia and would not interfere with any of the relevant human rights listed above, as the Minister's role has never affected or protected any relevant human rights.

The aim of the digital radio moratorium period under section 35C of the BSA was to provide incumbent commercial radio broadcasters with a level of stability and certainty during the digital radio investment phase. As the Digital Radio Report has highlighted that the moratorium is no longer necessary for digital radio, removing the requirement for the digital radio moratorium period from the legislation will mean that the allocation of new digital commercial radio broadcasting licences is not restricted for a period of six years after the

commencement of digital radio services in a licence area. While removing the requirement for the digital radio moratorium period will change the legislation, removing it will not affect the human rights of people.

The Bill will amend of the definition of ‘*non-foundation digital radio multiplex transmitter licence*’ under the Radcomms Act. The amendment will amend legislation so that it reflects digital radio broadcasting policy but will not affect the human rights of people.

The Bill also makes minor amendments to repeal spent digital radio provisions. As these amendments aim to repeal already spent legislative provisions, any amendment made to such provisions would not infringe on any human rights of people.

Conclusion

The Bill is compatible with human rights and freedoms as it does not raise any human rights issues.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

ACMA:	Australian Communications and Media Authority
Bill:	Broadcasting Legislation Amendment (Digital Radio) Bill 2015
BSA:	<i>Broadcasting Services Act 1992 (Cth)</i>
DRMT:	Digital radio multiplex transmitter
Minister:	Minister for Communications
Radcomms Act:	<i>Radiocommunications Act 1992 (Cth)</i>

NOTES ON CLAUSES

BROADCASTING LEGISLATION AMENDMENT (DIGITAL RADIO) BILL 2015

Clause 1 – Short title

Clause 1 provides for the citation of the *Broadcasting Legislation Amendment (Digital Radio) Act 2015*.

Clause 2 – Commencement

Clause 2 provides for the whole of the Act to commence the day after the Act receives Royal Assent.

Clause 3 – Schedules

Clause 3 provides that the BSA and the Radcomms Act are amended or repealed as set out in the Schedules to the Bill.

SCHEDULE 1 – RESTRICTED DATACASTING LICENCES

Broadcasting Services Act 1992

Items 1, 2 and 3 – Definitions of ‘restricted datacasting licence’ and ‘restricted datacasting service’ in subsection 6(1)

Items 1, 2 and 3 omit ‘and restricted datacasting services’ from the definition of ‘broadcasting services bands’ and repeal the definitions of ‘restricted datacasting licence’ and ‘restricted datacasting service’ in subsection 6(1) the BSA. A ‘restricted datacasting licence’ is defined to mean a datacasting licence allocated as a result of an application for a restricted datacasting licence. The repeal of the definition of ‘restricted datacasting licence’ is necessary to remove the restricted datacasting licence category.

‘Restricted datacasting service’ is defined to mean a datacasting service provided under, and in accordance with the conditions of, a restricted datacasting licence. As it is defined solely by reference to a restricted datacasting licence, this definition is to be repealed as a consequence of the repeal of the definition of ‘restricted datacasting licence’.

The definition of ‘broadcasting services bands’ is amended as a consequence of the repeal of the definition of ‘restricted datacasting service’.

Item 4 – Subdivision C of Division 2 of Part 5

Item 4 repeals Subdivision C of Division 2 of Part 5 of the BSA. The only provision in Subdivision C is section 54B, which prohibits a person from exercising control over both a commercial radio broadcasting licence and a restricted datacasting licence in a licence area during the relevant digital radio moratorium period, where the commercial radio broadcasting licence was in force immediately before the digital radio start-up day for the licence area.

As both the restricted datacasting licence category and the requirement for the digital radio moratorium period are to be repealed (see Schedule 3), section 54B is no longer required.

Items 5 and 6 – Subsections 63(2A) and (2B) and paragraph 63(5)(a)

Item 5 repeals subsections 63(2A) and (2B) of the BSA, removing the requirement that a restricted datacasting licensee notify the ACMA where they become aware during the digital radio moratorium period that a person has become in a position to exercise control, or has ceased to exercise control, of a restricted datacasting licence.

Item 6 omits '(2A)' from paragraph 63(5)(a), removing reference to subsection 63(2A) from the offence provision in subsection 63(5), as a consequence of the repeal of subsection 63(2A).

Items 7 and 8 – Subsections 64(2A) and (2B) and paragraph 64(5)(a)

Item 7 repeals subsections 64(2A) and (2B) of the BSA, removing the requirement that a controller of a restricted datacasting licence notify the ACMA where they become aware during the digital radio moratorium period that that they are in a position to exercise control over a restricted datacasting licence.

Item 8 omits '(2A)' from paragraph 64(5)(a), removing reference to subsection 64(2A) from the offence provision in subsection 64(5), as a consequence of the repeal of subsection 64(2A).

Item 9 – Paragraph 130A(1)(f)

Item 9 omits '(other than restricted datacasting services)' from paragraph 130A(1)(f) of the BSA as a consequence of the repeal of the restricted datacasting licence category. Subsection 130A(1) allows the ACMA to determine technical standards relating to the digital transmission of certain services specified in subsection 130A(1), expressly excluding restricted datacasting services. As the definition of 'restricted datacasting services' is to be repealed, the reference in paragraph 130A(1)(f) is redundant.

Items 10, 11 and 12 – Paragraph 130AA(1)(f), (g) and subsection 130AA(3) (note 4)

Item 11 repeals paragraph 130AA(1)(g) of the BSA as a consequence of the repeal of the restricted datacasting licence category. Subsection 130AA(1) allows the ACMA to determine technical standards that relate to the digital transmission of certain services specified in subsection 130AA(1), including restricted datacasting services provided under restricted datacasting licences. The repeal of paragraph 130AA(1)(g) removes restricted datacasting services provided under restricted datacasting licences from the operation of subsection 130AA(1). Item 10 replaces ';' with '.' at the end of paragraph 130AA(1)(f), as a consequence of the repeal of paragraph 130AA(1)(g).

Item 12 repeals Note 4 to subsection 130AA(3), which refers to clause 24A of Schedule 6, which sets out special conditions for restricted datacasting licences. Note 4 is to be repealed as a consequence of the repeal of the restricted datacasting licence category.

Items 13 and 14 – Paragraphs 130BA(1)(g) and (f)

Item 14 repeals paragraph 130BA(1)(g) of the BSA as a consequence of the repeal of the restricted datacasting licence category. Subsection 130BA(1) allows the ACMA to determine technical standards that relate to domestic reception equipment that is capable of receiving certain services that are digitally transmitted and are specified in subsection 130BA(1), including restricted datacasting services provided under restricted datacasting licences. The repeal of paragraph 130BA(1)(g) removes this reference from the operation of subsection 130BA(1).

Item 13 replaces ‘;’ with ‘.’ at the end of paragraph 130BA(1)(f), as a consequence of the repeal of paragraph 130BA(1)(g).

Items 15 and 16 – Subparagraphs 130BA(2)(c)(vii) and (vi)

Item 16 repeals subparagraph 130BA(2)(c)(vii) of the BSA as a consequence of the repeal of the restricted datacasting licence category. Subsection 130BA(2) makes it an offence for a person to supply domestic reception equipment where it is capable of receiving certain digital services set out in subparagraph 130BA(2)(c) unless the equipment complies with a standard determined under subsection 130BA(1). Repeal of subparagraph 130BA(2)(c)(vii) removes restricted datacasting services provided under restricted datacasting licences from the operation of the offence provision in subsection 130BA(2).

Item 15 inserts ‘and’ at the end of subparagraph 130BA(2)(c)(vi) as a consequence of the repeal of subparagraph 130BA(2)(c)(vii), which is necessary to link subparagraph 130BA(2)(c)(vi) to paragraph 130BA(2)(d).

Items 17 and 18 – Subparagraph 130BA(3)(a)(vii) and (vi)

Item 18 repeals subparagraph 130BA(3)(a)(vii) of the BSA as a consequence of the repeal of the restricted datacasting licence category. Subsection 130BA(3) is a civil penalty provision which provides that a person must not supply domestic reception equipment if the equipment is capable of receiving certain digitally transmitted services specified in paragraph 130BA(3)(a) unless the equipment complies with a standard determined under subsection 130BA(1). The repeal of subparagraph 130BA(3)(a)(vii) removes restricted datacasting services provided under restricted datacasting licences from the list of services in paragraph 130BA(3)(a).

Item 17 inserts ‘and’ at the end of subparagraph 130BA(3)(a)(vi) as a consequence of the repeal of subparagraph 130BA(3)(a)(vii), which is necessary to link subparagraph 130BA(3)(a)(vi) to subsection 130BA(4).

Items 19 and 20 – Paragraph 130F(1)(f) and paragraph 130F(1)(fa)

Items 19 and 20 remove references to ‘restricted datacasting licence’ from the definition of ‘industry activity’ in subsection 130F(1) of the BSA as a consequence of the repeal of the restricted datacasting licence category. Item 19 omits ‘(other than a restricted datacasting licence)’, from paragraph 130F(1)(f). Paragraph 130F(1)(f) includes providing a datacasting service under a datacasting licence as an ‘industry activity’ but excludes providing a

datacasting service under a restricted datacasting licence. As the restricted datacasting licence category is to be repealed, the reference is redundant.

Item 20 repeals paragraph 130F(1)(fa) as a consequence of the repeal of the restricted datacasting licence category. The repeal of paragraph 130F(1)(fa) effectively removes from the definition of ‘industry activity’ the provision of a restricted datacasting service under a restricted datacasting licence.

Item 21 – Subclause 1(1) of Schedule 1

Item 21 removes the reference to restricted datacasting licences from subclause 1(1) of Schedule 1 to the BSA as a consequence of the repeal of the restricted datacasting licence category. As the restricted datacasting licence category is to be repealed, this reference is redundant.

Items 22, 23 and 24 – Paragraphs 2(1)(b) and 2(1)(bb) and subclause 2(2B) of Schedule 1

Item 23 repeals paragraph 2(1)(bb) of Schedule 1 to the BSA. Clause 2 of Schedule 1 sets out the circumstances that amount to ‘when a person is in a position to exercise control’ of a licence or company for the purposes of the Schedule. Paragraph 2(1)(bb) of Schedule 1 sets out circumstances relevant to a restricted datacasting licence. As the restricted datacasting licence category is to be repealed, this provision is redundant.

Item 22 omits a reference to ‘or a restricted datacasting licence’ from paragraph 2(1)(b) of Schedule 1. Paragraph 2(1)(b) sets out the circumstances that amount to ‘when a person is in a position to exercise control’ of a licence other than a datacasting transmitter licence or a restricted datacasting licence. As the restricted datacasting licence category is to be repealed, this reference is redundant.

Item 24 repeals subclause 2(2B) of Schedule 1, which provides an exemption to the application of paragraph 2(1)(bb). As a consequence of the repeal of paragraph 2(1)(bb) of Schedule 1, subclause 2(2B) becomes redundant.

Items 25 and 26 – Paragraph 4(2)(b) and paragraph 4(2)(bb) of Schedule 1

Item 25 omits ‘or a restricted datacasting licensee’ from paragraph 4(2)(b) of Schedule 1 to the BSA. Clause 4 of Schedule 1 provides special provisions for authorised lenders, subject to the exemption set out in subclause 4(2). The exemption in paragraph 4(2)(b) includes a circumstance where a licensee controls the selection or provision of any of the programs to be broadcast by the licensee, but excludes a restricted datacasting licensee. As the restricted datacasting licence category is to be repealed, this reference is redundant.

Item 26 repeals paragraph 4(2)(bb) of Schedule 1, which provides an exemption from the operation of clause 4 of Schedule 1 in the case of a restricted datacasting licensee. As the restricted datacasting licence category is to be repealed, this exemption is no longer necessary.

Item 27 – Subclause 4(4) of Schedule 1 (paragraph (bc) of the definition of ‘media company’)

Item 27 repeals paragraph 4(4)(bc) of the definition of ‘media company’ in Schedule 1 to the BSA, which includes in that definition a company that holds a restricted datacasting licence. As the restricted datacasting licence category is to be repealed, this part of the definition is no longer necessary.

Items 28 and 29 – Simplified outline in clause 1 of Schedule 6

Item 28 effectively removes the reference to ‘(other than restricted datacasting licensees)’ from the simplified outline in clause 1 of Schedule 6 to the BSA. The simplified outline for Schedule 6 explains what datacasting licensees, excluding restricted datacasting licensees, will be allowed to provide by way of content.

Item 29 removes the explanation of what restricted datacasting licensees are not allowed to provide by way of content from the simplified outline in clause 1 of Schedule 6.

As the restricted datacasting licence category is to be repealed, the references to ‘restricted datacasting licensees’ in the simplified outline to Schedule 6 are redundant.

Item 30 – Subclause 7(3) of Schedule 6

Item 30 repeals subclause 7(3) of Schedule 6 to the BSA. Subclause 7(1) of Schedule 6 is the provision by which the ACMA is empowered to allocate a datacasting licence to a person where that person applies in writing. Subclause 7(3) provides that an application under subclause 7(1) may be expressed to be an application for a restricted datacasting licence. In order to repeal the restricted datacasting licence category, subclause 7(3) is to be repealed so that applicants for datacasting licences are no longer able to express their application as being for a restricted datacasting licence.

Items 31, 32 and 33 – Paragraph 12(1)(a) and clauses 12 and 12A of Schedule 6

Item 32 removes the reference ‘(other than restricted datacasting licences)’ from paragraph 12(1)(a) of Schedule 6 to the BSA. Subclause 12(1) of Schedule 6 currently requires the ACMA to maintain a Register in which the ACMA includes particulars of datacasting licences, other than restricted datacasting licences, and such information about transmitter licences as the ACMA determines. (Provisions relevant to the ACMA’s obligation to maintain a Register of restricted datacasting licences are set out under clause 12A of Schedule 6.)

Item 31 repeals the heading of clause 12 of Schedule 6 and replaces it with ‘ACMA to maintain Register of datacasting licences’. The Heading currently provides that the ACMA is to maintain a Register of datacasting licences that are not restricted datacasting licences.

As the restricted datacasting licence category is to be repealed, the exclusion of ‘restricted datacasting licences’ from ACMA’s register is no longer necessary.

Item 33 repeals clause 12A of Schedule 6. Clause 12A requires the ACMA to maintain a Register of restricted datacasting licences, allows the ACMA to maintain the register

electronically and requires that the Register is available on the internet. As the restricted datacasting licence category is to be repealed, the requirement that the ACMA maintain a register of such licences is no longer necessary.

Items 34 and 35 – Paragraphs 24(1)(ca) and (i) of Schedule 6

Items 34 and 35 remove the reference ‘if the licence is not a restricted datacasting licence’ from paragraph 24(1)(ca) of Schedule 6 to the BSA and from paragraph 24(1)(i) of Schedule 6 respectively.

Subclause 24(1) of Schedule 6 sets out general conditions that apply to datacasting licences. Paragraphs 24(1)(ca) and (i) both set out conditions that apply if the licence is not a restricted datacasting licence. As the restricted datacasting licence category is to be repealed, the references excluding restricted datacasting licences from the conditions in paragraphs 24(1)(ca) and (i) are no longer necessary.

Item 36 – Clause 24A of Schedule 6

Item 36 repeals clause 24A of Schedule 6 to the BSA, which sets out special conditions for restricted datacasting licences. As the restricted datacasting licence category is to be repealed, the special conditions set out in clause 24A are no longer necessary.

Items 37 and 38 – Subclauses 52(1A) and (2) of Schedule 6

Item 37 repeals subclause 52(1A) of Schedule 6 to the BSA. Clause 52 sets out offences for breach of licence conditions. Subclause 52(1A) makes it an offence for a restricted datacasting licensee to engage in conduct that breaches a condition of the licence set out in clause 24A. As the restricted datacasting licence category is to be repealed, the offence provided for in subclause 52(1A) is redundant.

Item 38 removes the reference to ‘or (1A)’ from subclause 52(2), as a consequence of the repeal of subclause 52(1A).

Items 39, 40 and 41 – Subclause 52A(1A), (2) and (3) of Schedule 6

Item 39 repeals subclause 52A(1A) of Schedule 6 to the BSA. Clause 52A imposes a civil penalty for certain breaches of conditions of datacasting licences. Subclause 52A(1A) makes it an offence for a restricted datacasting licensee to breach a condition of the licence set out in clause 24A. As the restricted datacasting licence category is to be repealed, the civil penalty provision in subclause 52A(1A) is no longer necessary.

Item 40 repeals subclause 52A(2) of Schedule 6 and replaces it with ‘subclause (1) is a civil penalty provision’. Effectively, this removes the reference to subclause (1A) being a civil penalty provision and is necessary as a consequence of the repeal of subclause 52A(1A).

Item 41 removes the reference to ‘or 1A’ from subclause 52A(3) of Schedule 6 which is necessary as a consequence of the repeal of subclause 52A(1A).

Items 42 and 43 – Subclauses 54(2A), (3A) and (4) of Schedule 6

Item 42 repeals subclauses 54(2A) and (3A) of Schedule 6 to the BSA. Clause 54 sets out provisions relating to the suspension and cancellation of datacasting licences.

Subclause 54(2A) relates to the suspension of restricted datacasting licences. As the restricted datacasting licence category is to be repealed, the suspension provisions relevant only to restricted datacasting licences in subclause 54(2A) are no longer necessary.

Subclause 54(3A) relates to the cancellation of restricted datacasting licences. As the restricted datacasting licence category is to be repealed, the cancellation provisions relevant only to restricted datacasting licences in subclause 54(3A) are no longer necessary.

Item 43 effectively removes the references to subclauses 54(2A) and (3A) in subclause 54(4), which is necessary as a consequence of the repeal of subclauses 54(2A) and (3A).

Radiocommunications Act 1992

Items 44, 45, 46, 47 and 48 – Definitions of definition of ‘category 1 digital radio multiplex transmitter licence’ and ‘category 2 digital radio multiplex transmitter licence’ in section 5

Item 46 repeals paragraph (c) of the definition of ‘category 1 digital radio multiplex transmitter licence’, and Item 48 repeals paragraph (d) from the definition of ‘category 2 digital radio multiplex transmitter licence’ in section 5 of the Radcomms Act, which effectively removes the reference to ‘one or more restricted datacasting services’ in those definitions. As the restricted datacasting licence category is to be repealed, the references to restricted datacasting licences are no longer necessary for these definitions.

Item 44 replaces ‘any or all’ with ‘either or both’ in the definition of category 1 digital radio multiplex transmitter licence, which is necessary as a consequence of the repeal of paragraph (c), as there are now only two kinds of services that may be transmitted using a category 1 digital radio multiplex transmitter licence.

Items 45 and 47 effectively replace ‘;’ with ‘.’ at the end of paragraph (b) in the definition of category 1 digital radio multiplex transmitter licence, and at the end of paragraph (c) in the definition of category 2 digital radio multiplex transmitter licence respectively, which is necessary as a consequence of the repeal of paragraphs (c) and (d) in the definitions.

Item 49 – Definition of ‘category 3 digital radio multiplex transmitter licence’ in section 5

Item 49 repeals the definition of ‘category 3 digital radio multiplex transmitter licence’ in section 5 of the Radcomms Act and replaces it with a new one that effectively removes the reference to ‘one or more restricted datacasting services, where each relevant restricted datacasting licence is held by a national broadcaster.’ The new definition will mean that ‘category 3 digital radio multiplex transmitter licence’ is defined to mean a transmitter licence for one or more multiplex transmitters that are for use for transmitting one or more digital national radio broadcasting services in a designated BSA radio area.

As the restricted datacasting licence category is to be repealed, the reference to restricted datacasting licences and services is to be removed from the definition of ‘category 3 digital radio multiplex transmitter licence’.

Items 50 and 51 – Definitions of ‘restricted datacasting licence’ and restricted datacasting service’ in section 5

Item 50 repeals the definition of ‘restricted datacasting licence’ and Item 51 repeals the definition of ‘restricted datacasting service’ in section 5 of the Radcomms Act. Both definitions refer to the definitions in the BSA. (See Items 2 and 3, which repeal the definitions in the BSA.)

Items 52 and 53 – Paragraphs 31(1)(a) and 31(1A)(a)

Item 53 repeals paragraph 31(1A)(a) in the Radcomms Act and replaces it with a new paragraph (a). Subsection 31(1) allows the Minister, after consulting the ACMA, to designate a part of the spectrum as being primarily for broadcasting purposes or restricted datacasting services or both and refer it to the ACMA for planning under Part 3 of the BSA. Under subsection 31(1A) the Minister may after consulting the ACMA and in accordance with the spectrum plan, designate a part of the spectrum as being partly for the purpose of digital radio broadcasting services and restricted datacasting services and refer that part of the spectrum to the ACMA for planning under Part 3 of the BSA. The new paragraph 31(1A)(a) effectively removes the reference to restricted datacasting services so that the provision only applies in relation to digital radio broadcasting services. As the restricted datacasting licence category is to be removed, the reference to ‘restricted datacasting services’ in paragraph 31(1A)(a) is redundant.

Item 52 removes the reference to ‘or restricted datacasting services, or both’ from paragraph 31(1)(a), as a consequence of the removal of the restricted datacasting licence category.

Items 54, 55, 56, 57 and 58 – Subparagraphs 109B(1)(f)(ii), 109B(1)(f)(iii), 109B(1)(g)(iii), 109B(1)(g)(iv) and paragraph 109B(1)(h)

Items 55 and 57 repeal subparagraphs 109B(1)(f)(iii) and (g)(iv) of the Radcomms Act. Subsection 109B(1) provides conditions of digital radio multiplex transmitter licences. Paragraphs 109B(1)(f) and (g) contain conditions relevant to category 1 and category 2 digital radio multiplex transmitter licences respectively. Paragraphs 109B(1)(f) and (g) also contain exceptions to these conditions.

Subparagraphs 109B(1)(f)(iii) and (g)(iv) are exceptions to conditions that apply only where the service is a restricted datacasting service, and there is in force a restricted datacasting licence authorising the provision of the service. As a consequence of the removal of the restricted datacasting licence category, these provisions are no longer necessary.

Items 54 and 56 remove the reference to ‘or’ at the end of subparagraphs 109B(1)(f)(ii) and (g)(iii) respectively, which is necessary as a consequence of the repeals of 109B(1)(f)(iii) and (g)(iv).

Item 58 repeals paragraph 109B(1)(h) replacing it with a new paragraph (h). Paragraph 109B(1)(h) provides a condition relevant to category 3 digital radio multiplex transmitter licences and provides two exceptions, one relevant to circumstances where the service is a restricted datacasting service, and there is in force a restricted datacasting licence authorising the provision of the service, and one relevant to where the service is a digital national radio broadcasting service. The new paragraph 109B(1)(h) effectively removes the exception relevant to restricted datacasting licences, while preserving the exception relevant to digital national radio broadcasting services. As a consequence of the removal of the restricted datacasting licence category, the exception to the condition relevant to restricted datacasting licences is no longer necessary.

Items 59 and 60 – Definition of ‘content service’ in section 118NB

Item 59 removes the reference to ‘(iii)’ from paragraph (a) in the definition of ‘content service’ in section 118NB, and Item 60 removes the reference to ‘(iv)’ from paragraph (b) in the definition of ‘content service’ in section 118NB, which is necessary as a consequence of the repeal of subparagraphs 109B(1)(f)(iii) and (g)(iv) in Items 55 and 57.

SCHEDULE 2 – START-UP DAY

Broadcasting Services Act 1992

Item 1 – Subsection 8AC(3)

Item 1 repeals subsection 8AC(3) of the BSA, which requires the ACMA to ensure that the digital radio start-up day for a metropolitan licence area is not later than 1 July 2009 and that the digital radio start-up day for a regional licence area is the day specified for the regional licence area in a legislative instrument made by the Minister. Repeal of this provision is necessary to remove the Minister’s role in the setting of the digital radio start-up day in regional licence areas and to remove a spent provision.

Items 2 and 3 – Subsection 8AC(8)

Items 2 and 3 repeal the definitions of ‘metropolitan licence area’ and ‘regional licence area’ in subsection 8AC(8) of the BSA. As a consequence of the repeal of subsection 8AC(3), these definitions are no longer necessary.

SCHEDULE 3 – DIGITAL RADIO MORATORIUM PERIOD

Broadcasting Services Act 1992

Item 1 – Definition of ‘digital radio moratorium period’ in subsection 6(1)

Item 1 repeals the definition of ‘digital radio moratorium period’ in subsection 6(1) of the BSA. As a consequence of the repeal of section 35C in Item 3, the definition is redundant.

Item 2 – Subsection 26C(2)

Item 2 repeals subsection 26C(2), which provides that if the ACMA allocates a digital commercial radio broadcasting licence in accordance with subsection 35D(3) and the licence authorises the licensee to provide digital commercial radio broadcasting service in the licence

area, the relevant licence plan is not required to deal with those services. As a consequence of the repeal of section 35D in Item 4, this provision is no longer necessary.

Item 3 – Section 35C

Item 3 repeals section 35C of the BSA, which provides that the ACMA must not allocate new digital commercial radio broadcasting licences in a licence area during the digital radio moratorium period. Section 35C is to be removed in order to give effect to the proposal to remove the requirement for the digital radio moratorium period.

Item 4 – Section 35D

Item 4 repeals section 35D of the BSA, which provides an exception to the requirement in section 35C that the ACMA not allocate digital commercial radio broadcasting licences in a licence area during the digital radio moratorium period. Section 35D is contingent, amongst other things, on the ACMA being satisfied at a particular time during the digital radio moratorium period for the licence area that the licensee is not providing at least one digital commercial radio broadcasting service under the licence in the licence area. As a consequence of the repeal of section 35C, this provision becomes redundant.

Items 5 and 6 – Subsections 36A(7) and 41D(6)

Items 5 and 6 repeal subsections 36A(7) and 41D(6) of the BSA respectively. Both subsections refer to the sections in which they are located (that is, section 36A and section 41D respectively) having effect subject to section 35D. As a consequence of the repeal of section 35D, subsections 36A(7) and 41D(6) become redundant.

Item 7 – Table item dealing with subsection 35D(2) in subsection 204(1)

Item 7 repeals the table item dealing with subsection 35D(2) in subsection 204(1) of the BSA, which provides that an application may be made to the Administrative Appeals Tribunal for a review of a decision to make a determination under subsection 35D(2). As a consequence of the repeal of section 35D, the item in the table in subsection 204(1) dealing with subsection 35D(2) becomes redundant.

Radiocommunications Act 1992

Item 8 – Definition of ‘digital radio moratorium period’ in section 5

Item 8 repeals the definition of ‘digital radio moratorium period’ in section 5 of the Radcomms Act. The definition refers to the definition of digital radio moratorium period in the BSA. As a consequence of the repeal of section 35C of the BSA and the repeal of the definition of digital radio moratorium period in the BSA, the definition of ‘digital radio moratorium period’ in the Radcomms Act is to be repealed.

Item 9 – Subsections 109D(1) and (2)

Item 9 repeals subsections 109D(1) and (2) and replaces them with a new subsection 109D(1). Section 109D sets out conditions of foundation digital radio multiplex transmitter licences. By operation of subsection 109D(1), section 109D only currently

applies to a foundation digital radio multiplex transmitter licence if the licence was issued otherwise than in accordance with a price-based allocation system determined under section 106 and if the digital radio moratorium period for the relevant designated BSA radio area has not ended.

The effect of new subsection 109D(1) is to make the application of section 109D contingent only on the foundation digital radio multiplex transmitter licence being issued otherwise than in accordance with a price-based allocation system determined under section 106, removing the requirement that section 109D will also only apply when the digital radio moratorium period for the relevant designated BSA radio area has not ended. That is, as a consequence of the removal of the requirement for the digital radio moratorium period in section 35C, subsection 109D(1)(b) is redundant.

Subsection 109D(2) makes it a condition that a relevant licensee must take reasonable steps to ensure that a person does not hold shares in the licensee unless the person falls within one of the categories set out in paragraphs 109D(2)(a)-(d). This provision was intended to apply only during the digital radio moratorium period for the relevant designated BSA radio. As a consequence of the removal of the requirement for the digital radio moratorium period, subsection 109D(2) is no longer necessary. The repeal of subsection 109D(2) will not affect the restrictions that are effectively set out in sections 102C and 102D on the categories of persons who are entitled to subscribe for shares in the eligible joint venture company that holds a foundation digital radio multiplex transmitter licence that is issued otherwise than in accordance with a price-based allocation system determined under section 106

Items 10, 11, 12 and 13 – Subsections 118NQ(3), (7), (8) and (9) and paragraphs 118NX(2)(a) and 118NY(2)(a)

Item 11 repeals subsections 118NQ(7), (8) and (9). Section 118NQ includes provisions related to the standard access entitlements of certain incumbent digital commercial radio broadcasting licensees. A standard access entitlement is an entitlement to access a set fraction of the multiplex capacity available under a digital radio multiplex transmitter licence. The operation of subsection 118NQ(7) is contingent on a digital commercial radio broadcasting licensee being given a notice under subsection 35D(2) of the BSA and the ACMA allocating a digital commercial radio broadcasting licence in accordance with subsection 35D(3) of the BSA. As a consequence of the repeal of section 35D of the BSA, and the removal of the requirement for the digital radio moratorium period, subsection 118(7), is redundant.

As a consequence of the repeal of 118NQ(7), subsection 118NQ(8) which provides that subsection (7) has effect subject to section 118NV, is redundant. Subsection 118NQ(9), which provides that if a standard access entitlement is transferred to the ACMA under paragraph (7)(c), the ACMA must not use the standard access entitlement, is also redundant.

Item 10 effectively removes a reference to ‘subsection (7)’ from subsection 118NQ(3). Subsection 118NQ(3) refers to subsection 118NQ(2) having effect subject to subsections (5), (6) and (7). As a consequence of the repeal of subsection 118NQ(7), the reference to subsection (7) is unnecessary.

Items 12 and 13 remove the references to ‘118NQ(7)’ from paragraphs 118NX(2)(a) and 118NY(2)(a) respectively. Paragraphs 118NX(2)(a) and 118NY(2)(a) refer to a transfer of a standard access entitlement under subsection 118NQ(7) not being prevented by

subsections 118NX(1) and 118NY(1) respectively. As a consequence of the repeal of subsection 118NQ(7), the references to subsection (7) in paragraphs 118NX(2)(a) and 118NY(2)(a) are redundant.

Item 14 – Subsection 131AA(8)

Item 14 repeals subsection 131AA(8). Section 131AA provides for applications for the transfer of apparatus licences. Subsection 131AA(8) provides that if a foundation digital radio multiplex transmitter licence was issued otherwise than in accordance with a price-based allocation system determined under section 106, the licence must not be transferred to a person unless the digital radio moratorium period for the designated BSA radio area concerned has ended. As a consequence of the removal of the digital radio moratorium period requirement, subsection 131AA(8) becomes redundant.

SCHEDULE 4 – NON-FOUNDATION DIGITAL RADIO MULTIPLEX TRANSMITTER LICENCE

Radiocommunications Act 1992

Item 1 – Definition of ‘non-foundation digital radio multiplex transmitter licence’ in section 5

Item 1 replaces the definition of ‘non-foundation digital radio multiplex transmitter licence’ in section 5 of the Radcomms Act so that category 3 digital radio multiplex transmitter licences are excluded from the definition. Currently, ‘non-foundation digital radio multiplex transmitter licence’ is defined to mean a digital radio multiplex transmitter licence that is not a foundation digital radio multiplex transmitter licence. ‘Foundation digital radio multiplex transmitter licence’ is defined to mean a foundation category 1 digital radio multiplex transmitter licence or a foundation category 2 digital radio multiplex transmitter licence.

As a result of this Item, a ‘category 3 digital radio multiplex transmitter licence’ will no longer be considered to be a ‘non-foundation digital radio multiplex transmitter licence’. As no change is being made to the definition of ‘foundation digital radio multiplex licence’, this definition will continue to exclude category 3 digital radio multiplex transmitter licences.

SCHEDULE 5 – REPEALS OF SPENT PROVISIONS

Broadcasting Services Act 1992

Item 1 – Section 215B

Item 1 repeals section 215B of the BSA, which is a spent provision, as the Minister has caused a review to be conducted of the matters set out in that section and tabled a report of the review in each House of the Parliament.

Radiocommunications Act 1992

Item 2 – Section 313B

Item 2 repeals section 313B of the Radcomms Act, which is a spent provision, as the Minister has caused a review to be conducted of the matters set out in that section and tabled a report of the review in each House of the Parliament.